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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 PENELOPE BERGMAN, on behalf of
12 herself and all others similarly situated,

13 Plaintiffs,

14 v.

15 FIDELITY NATIONAL FINANCIAL,
16 INC.; and DOES 1–10, inclusive,

Defendants.

Case No. 2:12-cv-05994-ODW(MANx)

**ORDER CONVERTING
DEFENDANTS' MOTION TO
DISMISS INTO A MOTION
FOR SUMMARY JUDGMENT [35]**

17 After careful consideration, the Court hereby **CONVERTS** Defendant's Motion
18 to Dismiss Plaintiff's First Amended Complaint into a motion for summary judgment
19 under Federal Rule of Civil Procedure 12(d).

20 For the purposes of the converted motion, the Court is solely interested in facts
21 and evidence regarding whether Plaintiff took out the loan at issue primarily for
22 residential purposes or primarily for commercial or business purposes.¹ See 12 U.S.C.
23 § 2606(a)(1). The parties may submit additional evidence and further brief the
24 Court—but are limited to a five-page brief, with declarations and exhibits if
25 necessary—no later than November 19, 2012. The parties need not repeat arguments
26 already submitted in their moving and opposition papers.

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28 ¹ Should the Court find genuine issues of material fact on this issue, the Court will proceed to
consider the remainder of Defendant's Motion as a motion to dismiss.

1 Further, the November 19 hearing on Defendant's Motion is hereby
2 **VACATED**. No appearances are necessary unless otherwise ordered by the Court.
3 **IT IS SO ORDERED.**

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5 November 7, 2012

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9 **OTIS D. WRIGHT, II**
10 **UNITED STATES DISTRICT JUDGE**
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